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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,030	12/08/2003	David Pretzsch	11590.002	2689
28309	7590	02/15/2005	EXAMINER	
BOWERS HARRISON LLP GARY K. PRICE, ESP. 25 RIVERSIDE DRIVE PO BOX 1287 EVANSVILLE, IN 47706-1287			RINEHART, KENNETH	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/729,030

Applicant(s)

PRETZSCH ET AL.

②

Examiner

Kenneth B Rinehart

Art Unit

3749

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: see attached.

Response to Arguments

Applicant's arguments filed 2/11/05 have been fully considered but they are not persuasive. Regarding the drawings and the amendments to the specifications, the applicant has not identified in either the trap door openings, a second opening, an alignment of said first and second openings, the passing of material from said prefill chamber through said first and second openings, the exhaust, a controlled air plenum. Regarding the 35 USC 112 first paragraph rejection of the two amended clauses, in a typical response to such a rejection an applicant points out where in the originally filed specification the claim language is found in order to overcome this rejection. However, the applicant appears to be providing support for these limitations by relying upon two replacement drawings which were filed after the filing date of the application. This evidence is not persuasive. Regarding applicant's arguments concerning Brenman, the reference reads on the limitations as claimed. The applicant argues, "The ability of the pre-fill chamber of the present invention to temporarily close while material is being added to the chamber as well as the ability of the present invention to move combustible materials from the pre-fill chamber to the burn barrel without having the burn barrel open is an important aspect of the present invention and distinction over the prior art cited. " Brenman does function in this manner as door 8 is closed while material is being added to the chamber, and door 6 is closed as material moves. Item 4 is a material container, as it at some time contains material. Regarding claims 11 and 17, examination on the merits has ended. It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims or add new claims after a final rejection (37 CFR 1.116). In the response the applicant has added the limitations of claim 15 and deleted another limitation. The applicant states that the "Examiner has stated claim 11 with the

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above limitation would be allowable". As the applicant has deleted another limitation, the examiner believes this statement to be inaccurate. The applicant appears to have developed a new combination of limitations. Additionally, the applicant has failed to provide good and sufficient reasons why the amendment to claims 11 and 17 are necessary and were not earlier introduced (37 CFR 1.116(b)). Therefore, the amendment will not be entered.


KENNETH RINEHART
PRIMARY EXAMINER